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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4810 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -
3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?

K J PATEL

Versus

GOVT. OF GUJARAT

Appearance:

MR JD AJMERA for Petitioner
MR BY MANKAD AGP FOR respondents no. 1 and 2.
M/S MG DOSHIT & CO respondent no. 3.
MS DAXA R VYAS for Respondent No. 4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 03/02/99

ORAL JUDGEMENT

This petition has been filed for regularization of the petitioner's post as permanent teacher and to fix the salary of the petitioner in pay scale of Rs. 290-560 from the date of his appointment and to pay arrears of salary.

2. There was a vacancy in the respondent school for a Drawing Teacher. The petitioner applied for the same and he was appointed on the post of Drawing Teacher in the respondent school from 10-12-1977 and his salary was fixed at Rs. 146/- p.m. as the school was not receiving any grant for the primary section at that stage. The appointment of the petitioner was temporary and subject to approval of the concerned department of the Government. Since 1978 the petitioner is being paid salary of Rs. 250/- p.m. in all. According to the Circular dated 3-8-1977 any teacher can be appointed from the list of the surplus teachers. If any management has not complied with the conditions the salary of such teacher was not to be payable for the purpose of grant. When the petitioner was appointed the Circular dated 3-8-1977 was not received by the respondent school and his appointment was prior to receipt of the said Circular dated 3-8-1977. The respondent school made a representation to the respondent no. 2 that the petitioner has already been appointed by the order dated 10-12-1977. At that time, there was no list of the surplus teachers in the office of the District Panchayat and no list of the surplus teacher was sent to the respondent - school. The Principal of the respondent school sent the letter dated 27-10-1980 to the Director of Education stating therein that the Circular regarding the appointment of new teacher was received by the school for the first time on 20-3-1979. While the appointment of the said teacher has already been made on 10-12-1977 and requested for approval of the appointment of the petitioner. The District Primary Education, District Panchayat, Bharuch sent a letter dated 19-4-1982 to the Education Director, Gujarat State, Ahmedabad informing that the appointments of the aforesaid teachers including the appointment of the petitioner were made by the concerned institutions before receiving the aforesaid Circular dated 3-8-1977 of the Government. At the time of their appointments there was no DTC teachers in the District Education Committee and regularization of appointments of those teachers including the petitioner was requested for the purpose of treating expenses as grantable. The District Primary Education Officer again sent a letter dated 5-8-1982 stating therein that the Circular dated 3-8-1977 was received after appointment of the petitioner as well as other persons. But the grant for salary has not been taken into account by treating their appointments as recognized on the basis of their Circular and the appointments of the said teachers were to be regularized. The District Primary Education Officer also sent the letter dated 17-11-1987 to the

Director of Primary and Adult Education stating therein that the appointments were made before the Circular was received and the proposal has already been sent for treating the appointment for regularization and asked for sanction for the petitioner's appointment. Thereafter, the petitioner sent a notice dated 27-9-1984 to the Deputy Director of Education. The District Primary Education Officer again sent a letter dated 10-12-1985 to the Director of Primary Education stating therein that the appointments of the aforesaid teachers have been made by the concerned institution before receipt of the Circular as stated in the letter dated 19-4-1982. When the proposal was made at that time DTC teacher was not available and requested for a decision after giving approval in that connection. The petitioner's appointment was not regularized or recognized by the Government and hence the petition.

3. The District Primary Education Officer filed an affidavit-in-reply stating therein that the petition is liable to be dismissed on the ground of alternative remedy available. It is an admitted fact that the institution is non-government grant-in-aid primary school. The respondent school is liable to pay the salary in the case the respondent - school fails to pay salary to any its teachers, such teacher can approach the Primary Education Tribunal under Section 40 of the Bombay Primary Education Act for redressal of his grievance. As the petitioner ought to have approached the Primary Education Tribunal for redressal of his grievances, this Court should not exercise its extra ordinary jurisdiction under Article 226 of the Constitution of India unless the alternative remedy is exhausted. The petitioner being an employee of the respondent no.4, the respondent no. 4 has no right to receive the grant from the Government. It is further stated that at the time of appointment of the petitioner there were six teachers in the respondent no.4 - school. One Kum. Shobhnaben Joshi, one of the said six teachers was a teacher in a special subject i.e. sewing, she possessed the qualification of S.S.C. examination and C.P. Ed. The respondent no.4 school had already a teacher in special subject and number of such teachers exceeded 15% of total number of teachers and the petitioner is considered to be a teacher of the special subject. The number of teachers in special subject in the respondent school has increased to 30% of total number of the teachers. That was not permissible under the Rules and hence the Circular dated 3-8-1977 was issued by the Government. Therefore, the petitioner's appointment was not approved by the Government. The respondents no. 1, 2 and 3 cannot be compelled to

release grant for salary of the petitioner in contravention of the Rules made in that behalf.

4. The respondent - school has also filed an affidavit-in-reply wherein it has been stated that the petitioner was appointed by the respondent no. 4 by the letter dated 10-12-1977 as a drawing teacher in primary section with effect from the date of appointment and that appointment was temporary and subject to the approval of the concerned department of the Government. The petitioner was appointed in place of one teacher - Mr. M.J. Patel who retired from the post on 5-9-1977. As the alternative remedy is available to the petitioner by way of approaching the Primary Education Tribunal for redressal of his grievance, this Court should not entertain this writ petition.

5. The petitioner has also filed rejoinder affidavit and it is made clear therein that the department has never raised any objection about the quota being exceeded of the specialized teachers. The respondent school by the letter dated 10-10-1986 informed the authority that the petitioner was appointed within 15% limit of specialized teachers. It is not open for the respondent no. 3 to take different stand at this time. It is also made clear that the same subject was not treated as a specialized subject by the Government till the resolution dated 22-10-1977 was passed.

6. Learned counsel for the petitioner submitted that the petitioner was appointed by the letter dated 10-12-1997. Since then he is working on fixed salary of Rs. 250/- p.m. in all. The appointment of the petitioner is legal one within the quota of limit of 15%. Ms. Shobhnaben Joshi was appointed on 19-6-1967 as a Sewing Teachers. But the same subject was considered as a specialized subject by the circular dated 22-10-1970. As such Ms. Shobhnaben Joshi was appointed as a regular teacher and at that time there was no notification for prescribing the same subject as a specialized teacher for the appointment of the teacher in a specialized teacher. As such, the appointment of the petitioner was within limit of 15% quota for the specialized teacher. As the circular dated 3-8-1977 was not received, the conditions of that Circular were not complied with at the time when the petitioner was appointed and the District Primary Education Officer sent various letters to the Director for recognition of the appointment of the petitioner. But the Government has not recognized the petitioner's appointment for one or the other reasons. The circular dated 3-8-1977 was not applicable in the case of the

petitioner due to the reason that at the relevant time there was no DTC teacher was available and the circular dated 3-8-1977 was received after the appointment of the petitioner.

7. Learned State Counsel for the respondents no. 1 to 3 contended that since the appointment of the petitioner has not been approved by the Government, the Government is not liable to pay salary to the petitioner admissible under the Rules and the petitioner had an alternative remedy to get the dispute decided by the Primary Education Tribunal. As such, this petition has no merits at all and the same is liable to be dismissed.

8. I have considered the arguments of learned counsel for the parties and perused the relevant papers. It is no doubt that the petitioner's appointment was made on 10-12-1977 by the institute at the time when the primary section was not given any grant by the Government. The Government has never treated the petitioner as a teacher for the purpose of grant and the appointment of the petitioner has yet not been approved or recognized by the Government. At the initial stage as grant for the primary section was not being paid, the institution is responsible and not the Government. But later on the District Primary Education Officer has requested the Director of Education, Gujarat State by various letters to recognize and approve the petitioner's appointment as the petitioner's appointment was made as a specialized subject teaching teacher within limit of 15%. For the first time, the State Government replied in September 1989 that grant for the petitioner's appointment cannot be given as the appointment of the petitioner exceeds 15% of specialized subject teachers. I have already stated above that the quota does not appear to be exceeded 15%. As such, the objection in that regard is unsustainable. The petitioner gave notice on 27-9-1984 for the first time for his grievance to the Dy. Director of Education and filed this petition in the year 1987. The other argument is that the petitioner's appointment was made before receipt of the circular dated 3-8-1977. No doubt, in that respect it has been clarified by the District Primary Education Officer that there was no DTC teacher in the District Education Committee. But the requirement is necessary that the institute should apply to the concerned authority for supply of surplus teacher from the District Education Committee. Moreover, at the relevant time, if the institution has not applied and at that time the grant for primary section was not given it was responsibility of the institute to pay salary to the petitioner as it is

a contract between the respondent school and the petitioner. As the petitioner's appointment was not made either with the approval of the Government or in accordance with the Rules and Regulations or the Circular. As such, at the initial stage the Government is not responsible for the payment of salary of the petitioner. But later on when the petitioner gave notice to the Director of Education it was the duty of the Director of Education either to reject or approve the same. No doubt in that respect the Director of Education raised certain queries by the letter dated 17-3-1986 and later on the letter was sent in the month of September, 1989 disapproving the appointment of the appointment on the ground that the appointment of the petitioner was not made within 15% quota of the specialized subject teacher. As the petitioner is working as a Primary Teacher since 1977 for the first time the Government refused to approve the petitioner's appointment in the month of September, 1989. As the petitioner has filed this petition on 18-2-1987 and the notice was issued to the respondents on 3-8-1988 the petitioner's right could have been considered from the date of the petition. As this Court cannot direct to regularize the petitioner's appointment which was made on 10-12-1977 by a private institute at that time grant was also not being paid for that purpose to the primary section. It is for the State Government to consider the case of the petitioner if it is found genuine, the petitioner will be entitled to be regularized from the date of the petition. Learned counsel for the petitioner submitted that petitioner's appointment was legal and it is not regularized. If the department has made objections and which are considered to be not sustainable at law, the petitioner's appointment will be legal appointment.

9. As discussed above, the petition is allowed to the extent that the Government is directed to consider the petitioner's appointment for recognition and regularization for the purpose of grant from the date of filing of this petition i.e. 18-2-1987. The Government is further directed to decide the matter regarding the appointment of the petitioner within a period of eight weeks from the date of presentation of a certified copy of this order. Rule is made absolute to the aforesaid extent, with no order as to costs. Interim relief, if any, stands vacated.